

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2009

No. 08-40899
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CLIFFORD BERNARD NELSON, also known as Dummy,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:01-CR-32-1

Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Clifford Bernard Nelson, federal prisoner # 05790-078, convicted of possession with intent to distribute, and distribution of, crack cocaine, appeals his reduced sentence imposed pursuant to 18 U.S.C. § 3582(c)(2). He argues that *United States v. Booker*, 543 U.S. 220 (2005), applies to § 3582(c)(2) proceedings and, as such, the district court was authorized to sentence him below the amended guidelines range. The Government has moved for summary affirmance and, alternatively, for an extension of time in which to file a brief, and the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Federal Public Defender has moved to withdraw to allow Nelson to proceed pro se on appeal.

The issue Nelson raises is foreclosed by our recent decision in *United States v. Dublin*, 572 F.3d 235, 236-39 (5th Cir. 2009), *petition for cert. filed* (Sept. 21, 2009) (No. 09-6657), which held that *Booker* is inapplicable to sentence reductions under § 3582(c) and, thus, that a district court cannot reduce a sentence below the minimum provided in the amended guidelines range. As such, Nelson's judgment is affirmed, and the Government's motion for summary affirmance is granted. Counsel's motion to withdraw is denied. *Cf. United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998).

AFFIRMED; MOTION FOR SUMMARY AFFIRMANCE GRANTED;
MOTION FOR EXTENSION OF TIME TO FILE BRIEF DENIED; MOTION TO
WITHDRAW DENIED.